

REMARKS

Overview

The Examiner has responded in the prior Office Action as follows: rejected claims 66-104, 107-109, and 111-172 under 35 U.S.C. § 102(e) as being anticipated by Evans et al., U.S. Patent No. 6,327,535 (hereinafter “Evans”), and rejected claims 105-106 and 110 under 35 U.S.C. § 103(a) as being unpatentable over Evans in view of Hoffberg et al., U.S. Patent No. 6,418,424. Thus, claims 66-172 continue to be pending.

Applicants respectfully traverse these rejections, however, as the Evans reference is not prior art for this application under 35 U.S.C. § 102(e) or 35 U.S.C. § 103(a), as discussed below. Since the Evans reference was the basis for the rejections of all of the pending claims, the removal of the Evans reference as prior art confirms that all of the claims in allowable form, and Applicants thus respectfully request that the Examiner timely indicate allowance of all pending claims.

In particular, the pending application is a continuation of parent U.S. Patent Application No. 09/724,894 (“the ‘894 application”), which was filed November 28, 2000 and which included a claim of priority to U.S. Patent Application No. 09/216,193 filed December 18, 1998. Furthermore, as noted in the previous response, the parent ‘894 application claims the benefit of priority of provisional U.S. Patent Applications Nos. 60/194,004 and 60/193,999, both filed April 2, 2000, and thus the pending application also receives the benefit of those provisional applications.

The Evans patent was filed April 5, 2000, and issued December 4, 2001. Thus, since the filing date of the Evans patent is after the priority benefit date of April 2, 2000 for the pending application based on the two indicated provisional applications (as well as being after the benefit date of December 18, 1998 for the pending application based on the ‘193 application), the Evans patent is not effective prior art for the pending application. In particular, 35 U.S.C. § 102(e) provides for prior art that is a patent application or patent “filed in the United States before the invention by the applicant” (emphasis added). However, since the Evans reference was filed on April 5, 2000, it was not filed before the priority date for the pending application, and thus cannot serve as prior art under 35 U.S.C. § 102(e) for the pending application. MPEP Section

706.02 confirms that the effective filing date of an application claiming the benefit of priority of an earlier-filed provisional application for subject matter disclosed in the provisional application is the filing date of the provisional application. Similarly, 35 U.S.C. § 103(a) provides that “[a] patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, ...” (emphasis added). Therefore, based on the preceding arguments regarding 35 U.S.C. § 102(e), the Evans reference as filed on April 5, 2000 cannot serve as prior art under 35 U.S.C. § 102(e) or 35 U.S.C. § 103(a) for the pending application.

In addition, Applicants thank the Examiner for his consideration of the initially filed Information Disclosure Statement (IDSes) filed in this application, but note that a subsequent IDS was filed on March 16, 2005 and has not yet been indicated by the Examiner to have been considered. Thus, Applicants thus respectfully request that the Examiner acknowledge consideration of the references of that previously submitted IDS by initialing each reference on a copy of the IDS and returning the copy to the Applicants' representative.

Conclusion

In light of the above remarks, Applicants respectfully submit that all of the pending claims are allowable. Applicants therefore respectfully request the Examiner to timely allow all pending claims. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (206) 694-4815.

Application No. 09/894,642
Reply to Office Action dated March 22, 2005

The Director is authorized to charge any additional fees due by way of this Amendment,
or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,
SEED Intellectual Property Law Group PLLC



James A. D. White
Registration No. 43,985

JDW:mt

Enclosure:
Postcard

701 Fifth Avenue, Suite 6300
Seattle, Washington 98104-7092
Phone: (206) 622-4900
Fax: (206) 682-6031

579721_1.DOC